



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R04-OAR-2017-0387; FRL-9979-78-Region 4]**

### **Air Plan Approval; SC; Definitions and Open Burning**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve changes to the South Carolina State Implementation Plan (SIP) to revise definitions and a regulation for open burning. EPA is approving portions of SIP revisions submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC) on the following dates: July 18, 2011, June 17, 2013, April 10, 2014, August 8, 2014, and July 27, 2016. These actions are being taken pursuant to the Clean Air Act (CAA or Act).

**DATES:** This rule will be effective **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2017-0387. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be

publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Akers can be reached via electronic mail at [akers.brad@epa.gov](mailto:akers.brad@epa.gov) or via telephone at (404) 562-9089.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. What Action is EPA Taking?**

On July 18, 2011, June 17, 2013, April 10, 2014, August 8, 2014, and July 27, 2016, SC DHEC submitted SIP revisions to EPA for approval that involve changes to South Carolina's SIP regulations to add definitions, make administrative and clarifying amendments, and correct typographical errors. These SIP submittals make changes to several air quality rules in South Carolina Code of Regulations Annotated (S.C. Code Ann. Regs.). The changes EPA is approving into the SIP in this action modify portions of Regulation 61-62.1 "Definitions and

General Requirements” at Section I - “Definitions” and make a revision to Regulation 61-62.2, - “Prohibition of Open Burning.”

At this time, EPA is not acting on the changes detailed in Table 1 below, which include portions of several SIP submittals that EPA has approved previously. EPA will address all remaining requested changes to the South Carolina SIP in the relevant SIP submissions as listed below in a separate action.

**Table 1. Other Portions of South Carolina Submittals.**

<b>Submittal</b>	<b>Regulation</b>	<b>Status</b>
July 18, 2011	Regulation 61-62.1, Section II	EPA will evaluate in a separate action.
July 18, 2011	Regulation 61-62.5, Standard No. 1	EPA will evaluate in a separate action.
July 18, 2011	Regulation 61-62.5, Standard No. 2	Approved April 3, 2013 (78 FR 19994).
July 18, 2011	Regulation 61-62.3	Approved August 21, 2017 (82 FR 39537).
July 18, 2011	Regulation 61-62.5, Standard No. 4	EPA will evaluate in a separate action.
July 18, 2011	Regulation 61-62.5, Standard No. 6	Not part of the SIP. <sup>1</sup>
July 18, 2011	Regulation 61-62.5, Standard No. 7	Approved August 10, 2017 (82 FR 37299).
July 18, 2011	Regulation 61-62.5, Standard No. 7.1	Approved August 10, 2017 (82 FR 37299).
June 17, 2013	Regulation 61-62.1, Section II	EPA will evaluate in a separate action.
June 17, 2013	Regulation 61-62.1, Section IV	Approved August 21, 2017 (82 FR 39537).
June 17, 2013	Regulation 61-62.3	Approved August 21, 2017 (82 FR 39537).
June 17, 2013	Regulation 61-62.5, Standard No. 4	EPA will evaluate in a separate action.
June 17, 2013	Regulation 61-62.5, Standard No. 5	Approved August 16, 2017 (82 FR 38825).
April 10, 2014	Regulation 61-62.5, Standard No. 7	Partially approved August 10, 2017 (82 FR 37299). <sup>2</sup>
April 10, 2014	Regulation 61-62.6	Approved August 21, 2017 (82 FR 39537).

<sup>1</sup> In its July 18, 2011, submittal, South Carolina is removing entirely a rule for setting alternative emission limitations at Regulation 61-62.5, Standard No. 6, “Alternative Emission Limitation Options (‘Bubble’),” and replacing it with “Reserved.” This change is not presently before EPA for action because Regulation 61-62.5, Standard No. 6 is not part of the State’s federally approved SIP. EPA rescinded the original approval of this regulation and disapproved a further revision to it on March 8, 1995 (60 FR 12700).

<sup>2</sup> EPA did not approve one portion of 61-62.5, Standard No. 7 from the April 10, 2014 submittal making revisions to certain provisions corresponding to EPA’s May 1, 2007 rule regarding ethanol production facilities (72 FR 24060). EPA will evaluate this portion of the April 10, 2014 submittal in a separate action.

August 8, 2014	Regulation 61-62.1, Section II	EPA will evaluate in a separate action.
August 8, 2014	Regulation 61-62.1, Section III	Approved June 12, 2015 (80 FR 33413) and May 31, 2017 (82 FR 24851).
August 8, 2014	Regulation 61-62.1, Section IV	Approved August 21, 2017 (82 FR 39537).
August 8, 2014	Regulation 61-62.1, Section V	Approved August 21, 2017 (82 FR 39537).
August 8, 2014	Regulation 61-62.5, Standard No. 1	EPA will evaluate in a separate action.
August 8, 2014	Regulation 61-62.5, Standard No. 4	EPA will evaluate in a separate action.
July 27, 2016	Regulation 61-62.1, Section II	EPA will evaluate in a separate action.
July 27, 2016	Regulation 61-62.5, Standard No. 4	EPA will evaluate in a separate action.
July 27, 2016	Regulation 61-62.5, Standard No. 5.2	EPA will evaluate in a separate action.

## **II. Background**

On August 21, 2017, EPA published a proposed rulemaking (82 FR 39551), which accompanied a direct final rulemaking (82 FR 39537) published on the same date. The proposed rule proposed to approve the portions of South Carolina’s SIP revisions described above. It also stated that if EPA received adverse comment on the direct final rule, then the Agency would withdraw the direct final rule and address public comments received in a subsequent final rule based on the proposed rule. EPA received one adverse comment letter from a Commenter regarding the portion of the direct final rule revising Regulation 61-62.1, Section I - “Definitions,” and the revision to Regulation 61-62.2, - “Prohibition of Open Burning,” and EPA accordingly withdrew those portions of the direct final rule proposing to approve changes to these rules on October 13, 2017 (82 FR 47636). After considering the adverse comments, EPA is now taking final action, based on the proposed rule, on the portions of South Carolina’s SIP revisions modifying Regulation 61-62.1, Section I and Regulation 61-62.2, as described above.

## **III. Analysis of South Carolina’s Submittals**

### **A. Definitions**

South Carolina is amending its list of applicable definitions related to the regulation of air quality at Regulation 61-62.1, Section I - "Definitions." The July 18, 2011, submittal makes several changes to the definitions as follows: 1) adds a definition for "CAA [Clean Air Act];" 2) adds definitions for "PM<sub>2.5</sub>," or fine particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers, and "PM<sub>2.5</sub> emissions;" 3) revises the definition of "fugitive emissions" to match the federal definition at 40 CFR 51.165(a)(1)(ix), 40 CFR 51.166(b)(20), and 40 CFR 52.21(b)(20); and 4) makes other clarifying and administrative edits to definitions throughout Section I, including renumbering. The June 17, 2013, submittal further revises the definitions to make several administrative edits only.

The April 10, 2014, submittal makes one revision to the definitions at Regulation 61-62.1, Section I.94. - "Volatile Organic Compound (VOC)," to add a compound to the list of compounds determined by EPA to have negligible photochemical reactivity and therefore exempted from being considered a VOC, consistent with the federal definition. This revision in the April 10, 2014, submittal was superseded by another revision to the definition of VOC at I.94. in the August 8, 2014, submittal. This latter submittal changes the format of the definition of VOC at I.99., renumbered from I.94., to incorporate directly the list of compounds exempted by EPA from the federal regulatory definition of VOC by making an explicit reference to the definition at 40 CFR 51.100(s). The August 8, 2014, submittal also revises Section I by: 1) adding definitions for "Code of Federal Regulations (CFR)," "NAICS [North American Industrial Classification System] Code," and "SIC [Standard Industrial Classification] Code"; and 2) making administrative changes throughout.

Finally, the July 27, 2016, submittal makes subsequent revisions to Section I to add the definition of “emission” and makes administrative edits throughout. EPA has reviewed the changes made to South Carolina’s definitions and is approving the aforementioned changes to Regulation 61-62.1, Section I into the SIP pursuant to CAA section 110 because the revisions are consistent with the CAA.

*B. Open Burning*

South Carolina is making a minor change to its rules covering open burning at Regulation 61-62.2 - “Prohibition of Open Burning.” The April 10, 2014, submittal revises the regulation to make an administrative edit to a referenced manual only and makes no substantive changes. Specifically, the State is changing the font for the referenced manual for internal consistency. EPA has reviewed this purely administrative change made to South Carolina’s rules for open burning and is approving the aforementioned change to Regulation 61-62.2 into the SIP pursuant to CAA section 110.

**IV. Response to Comments**

As noted above, EPA previously proposed to approve these changes, and others, to the South Carolina SIP on August 21, 2017 (82 FR 39551), along with a direct final rule published the same date (82 FR 39537). EPA received adverse comments from a Commenter regarding the portions of the direct final rule revising Regulation 61-62.1, Section I - “Definitions,” and the revision to Regulation 61-62.2, - “Prohibition of Open Burning,” and EPA accordingly withdrew those portions of the direct final rule on October 13, 2017 (82 FR 47636). EPA’s responses to the adverse comments are below.

*A. Definitions*

The Commenter stated that South Carolina’s definition of PM<sub>2.5</sub> “should also include condensable and filterable PM.” South Carolina’s SIP, under Regulation 61-62.1, Section I, defines PM<sub>2.5</sub> as “[p]articulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by a reference method based on Appendix L of 40 CFR 50 and designated in accordance with 40 CFR 53 or by an equivalent method designated in accordance with 40 CFR 53.” This definition is consistent with the way EPA uses the term in federal regulations. For example, PM<sub>2.5</sub> is defined in the National Ambient Air Quality Standards as “particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.” (*See* 40 CFR 50.7, 50.13 and 50.18.) Therefore, EPA disagrees with the Commenter’s implication that South Carolina’s definition of PM<sub>2.5</sub> is not sufficient.

Although the Commenter did not mention South Carolina’s definition of “PM<sub>2.5</sub> emissions,” EPA notes that the State has added this term to R. 61-62.1 and defines it as “[f]inely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by a reference method approved by the Department, with concurrence of the U. S. Environmental Protection Agency.” With regard to “filterable PM” as mentioned by the Commenter, this component is included in the definition as “[f]inely divided solid ... material” emitted to the ambient air. With regard to “condensable PM” as mentioned by the Commenter, South Carolina’s definition differs from the federal definition of “direct PM<sub>2.5</sub> emissions”<sup>3</sup> in that it does not specify the inclusion of “condensable PM<sub>2.5</sub>

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<sup>3</sup> Under the federal definition, “direct PM<sub>2.5</sub> emissions” means solid or liquid particles emitted directly from an air emissions source or activity, or reaction products of gases emitted directly from an air emissions source or activity which form particulate matter as they reach ambient temperatures. Direct PM<sub>2.5</sub> emissions include filterable and condensable PM<sub>2.5</sub> emissions composed of elemental carbon, directly emitted organic carbon, directly emitted sulfate, directly emitted nitrate, and other organic or inorganic particles that exist or form through reactions as

emissions.” However, South Carolina’s definition is sufficient for purposes of the State’s SIP because, as explained below, the condensable component of source PM<sub>2.5</sub> emissions will be included whenever a determination of a source’s PM<sub>2.5</sub> emissions is required.

The inclusion of the condensable component in determining a source’s PM<sub>2.5</sub> emissions is driven by the applicable source test method(s) required under a relevant rule. First, South Carolina’s federally approved SIP includes emission limits for “PM” but does not include emission limits for “PM<sub>2.5</sub>.” Therefore, “particulate matter emissions” (as defined in the South Carolina SIP), not “PM<sub>2.5</sub> emissions,” is the term that is relevant for the purpose of determining a source’s status of compliance with applicable PM emission limits of the South Carolina SIP. Second, South Carolina’s PSD rules (which apply throughout the State) and Nonattainment New Source Review rules (which do not currently apply for PM<sub>2.5</sub> in the State) both require sources to include the condensable portion of PM<sub>2.5</sub> emissions. (*See* definitions of “Regulated NSR pollutant” at Regulation 61-62.5, Standard No. 7(b)(44)(i)(a) and Standard No. 7.1(c)(13)(D), respectively.)<sup>4</sup> Third, under federal rules such as the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs), whether the condensable PM<sub>2.5</sub> component must be measured is dictated by the testing methods that are specified to apply under those rules. Finally, with regard to emissions inventories, EPA has provided guidance to assist states in appropriately accounting for the condensable PM<sub>2.5</sub>

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emissions reach ambient temperatures (including but not limited to crustal material, metals, and sea salt). 40 CFR 51.1000.

<sup>4</sup> The specific adoption of condensable PM<sub>2.5</sub> as a regulated NSR pollutant was included in a March 14, 2011, SIP revision, which was approved on June 23, 2011 (76 FR 36875), and corrected for Standard No. 7 on August 10, 2017 (82 FR 37299).



component in making annual reports of PM<sub>2.5</sub> emissions.<sup>5</sup> Moreover, the federal provisions regarding regular emissions inventory reporting at subpart A to part 51 require states to include the condensable and filterable portions of both PM<sub>2.5</sub> and PM<sub>10</sub> as applicable in the triennial reports of annual emissions for all sources and the annual reports of larger stationary source emissions. *See* 40 CFR 51.15(a)(1)(vi) - (vii).

South Carolina's definition of "PM<sub>2.5</sub>" is consistent with EPA's definition of the term. In addition, as discussed above, omitting the phrase "condensable PM<sub>2.5</sub> emissions" from South Carolina's definition of "PM<sub>2.5</sub> emissions" has no effect on the State's implementation of its PM<sub>2.5</sub> program because the South Carolina SIP currently has no limits on "PM<sub>2.5</sub> emissions" and because the other programs that regulate particulate matter specify the required source test methods, and those methods require measurement of the condensable component in determining a source's PM<sub>2.5</sub> emissions. Accordingly, EPA considers South Carolina's definitions of these terms approvable under the CAA.

#### *B. Open Burning*

The Commenter suggests that EPA cannot approve changes to South Carolina's open burning rules if the rules do not apply "at all times." EPA notes that no substantive change was made to the SIP-approved rule at Regulation 61-62.2, Prohibition of Open Burning. The only change made in the April 10, 2014, submittal was a change to the font from italics to non-italics for a referenced manual within the regulation. As stated in the proposed rule (82 FR 39551, August 21, 2017), EPA proposed to approve changes to the South Carolina SIP submitted by SC DHEC. The existing text of Regulation 61-62.2 is already part of South Carolina's federally

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<sup>5</sup> *See* "Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations," EPA-454/B-17-003, July 2017.

approved SIP, and only the revision to the rule (*i.e.*, the font change) was subject to comment through the proposal action. The change that was made is purely administrative in nature, and the Commenter has not raised a concern relevant to the revision. Nevertheless, EPA finds that Regulation 61-62.2 adequately prescribes the conditions under which open burning is allowed or prohibited. The only provisions of this rule related to timing are 62.2.E.6., 62.2.G.4. and 62.2.G.5., which are restrictions, not relaxations, on when open burning may be conducted in the State.

EPA received no additional comments regarding the changes to Regulation 61-62.1, Section I nor to the change made to Regulation 61-62.2. The public comments received are located in the Docket for this final action at [www.regulations.gov](http://www.regulations.gov).

#### **V. Incorporation by Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of South Carolina Regulation 61-62.1, Section I - “Definitions,” effective June 24, 2016, which revises definitions applicable to the SIP, and Regulation 61-62.2, “Prohibition of Open Burning,” effective December 27, 2013, which revises formatting for consistency. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State's implementation plan, have been incorporated by reference by EPA into that plan, are fully federally-enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be

incorporated by reference in the next update to the SIP compilation.<sup>6</sup>

## **VI. Final Action**

This is a final action based on the proposed rule (82 FR 39551). For the reasons discussed above, EPA is approving the aforementioned changes to the South Carolina SIP, submitted on July 18, 2011, June 17, 2013, April 10, 2014, August 8, 2014, and July 27, 2016, because they are consistent with the CAA and federal regulations.

## **VII. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

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<sup>6</sup> 62 FR 27968 (May 22, 1997).

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this final action for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have substantial direct effects on an Indian Tribe. The Catawba Indian Nation Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120, “all state and local

environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.” EPA notes this action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Volatile organic compounds.

Dated: June 12, 2018.

Onis “Trey” Glenn, III,

Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42.U.S.C. 7401 *et seq.*

**Subpart PP—South Carolina**

2. In §52.2120, the table in paragraph (c) is amended by revising under “Regulation No. 62.1” the entry “Section I” and the entry “Regulation No. 62.2” to read as follows:

**§52.2120 Identification of plan.**

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(c) \* \* \*

**Air Pollution Control Regulations for South Carolina**

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
Section I	Definitions	6/24/2016	[insert date of publication in the Federal Register], [insert Federal Register citation]	
**	**	*	*	*
Regulation No. 62.2	Prohibition of Open Burning	12/27/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	

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[FR Doc. 2018-13450 Filed: 6/22/2018 8:45 am; Publication Date: 6/25/2018]